REMARKS

The Applicant does not believe that examination of the foregoing amendment will result in the introduction of new matter into the present application for invention. Therefore, the Applicant, respectfully, requests that the above amendment be entered in and that the claims to the present application, kindly, be reconsidered.

The Office Action dated January 3, 2005 has been received and considered by the Applicants. Claims 1-24 are pending in the present application for invention. Claims 1-24 are rejected by the January 3, 2005 Office Action.

The drawings are objected to because they are difficult to read and the labels are unclear. The Applicants respectfully point out that new drawing have been submitted. The Examiner states that Figures 1a and 1b should be designated by legends --Prior Art--. Redlined drawings are submitted with this response for Figures 1a and 1b..

The Office Action rejects Claims 1, 3-4, 6-7, 9, 11-12, 14-16, 19-21, and 24 under the provisions of 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,936,940 issued to Marin et al. (hereinafter referred to as Marin et al.) in view of applicants admitted prior art.

Regarding Claim 1, the Office Action states that Marin et al. teach a method for adjusting a sender rate in a packet communication system to support congestion control between a server and a client comprising the steps defined by ejected Claim 1. The Examiner states that Marin et al. teach transmitting a plurality of data packets to a client or server and that depending on the situation data is routed between the nodes.

The Examiner further states that that Marin et al. teach determining and retransmitting lost packets on col. 1, lines 49-51. The Applicant, respectfully, points out that Marin et al. col. 1, lines 49-51 discuss that a potential result of congestion is the loss of transmitted traffic and the necessity to retransmit the lost packet. Marin et al. do not teach any determination by the client that on the data packets has been lost. Marin et al. makes a simple mention that congestion can result in data having to be retransmitted. In fact, Marin et al. specifically teach away from employing a methods or systems that would employ any form of retransmission. Marin et al. teach a method and apparatus for reducing congestion. The entire disclose of Marin et al. is devoted to reducing

PAGE 14/19 * RCVD AT 5/3/2005 10:34:06 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/0 * DNIS:8729306 * CSID:5853819983 * DURATION (mm-ss):06-08

congestion. There is no determining by a client that one of the packets is lost disclosed or suggested by Marin et al. Instead Marin et al. teach that the situation in which transmitted data is lost as discussed on col. 1, lines 49-51 from system congestion needs to be avoided. Marin et al. do not teach or suggest any method for determining loss of a data packet and transmitting a response packet for retransmission in the event and that a data packet is lost. Marin et al. teach a method and system that reduces congestion in order to avoid having to determine and retransmit in the event that a data packet is lost.

The Examiner further asserts that Marin et al. teach computing a new sender rate based on a round-trip time (RTT) corresponding to a latency between sending the response packet to the server and receiving the corresponding retransmission of the lost packet from the server at col. 12, lines 34-38; col. 6, lines 30-34; and col. 6 line 66-col. 7, line 13. The Applicant, respectfully, points out that Marin et al. do not provide any teaching regarding lost packets or calculating RTT with respect to lost packets. Marin et al. at col. 12, lines 34-38 discuss RTT as an estimate of round trip time but there is no disclosure or suggestion regarding the RTT being related to a retransmission of a lost packet. Col. 6, lines 30-34 of Marin et al. simply states that connection management facilities calculate reserved and best effort paths through the network, but do not disclose or suggest the RTT being related to a retransmission of a lost packet. At col. 6, line 66-col. 7, line 13, Marin et al. discuss that the state of congestion is approximated by the current length of the queuing delay in the network. There is no disclosure or suggestion for the RTT being related to a retransmission of a lost packet. As previously discussed, the entire teaching of Marin et al. is related to avoiding congestion and there is no teaching related to determination of RTT using the response time of a lost packet.

The Examiner further asserts that Marin et al. at col. 7, lines 17-22 teach transmitting the new sender rate to the server if a predetermined number of the RTTs is detected thereafter during the communication connection. The Applicant, respectfully, points out that Marin et al. at col. 7, lines 17-22 discuss the received acknowledgement being used to adjust the rate of admission of unreserved data in response to the estimated level of congestion. There is no teaching or suggestion for transmitting a new sender rate and there is no disclosure or suggestion for performing any function is response to a predetermined number of RTT's being detected.

PAGE 15/19 * RCVD AT 5/3/2005 10:34:06 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/0 * DNIS:8729306 * CSID:5853819983 * DURATION (mm-ss):06-08

The Examiner further states that it would have been obvious to one of ordinary skill in the art to be motivated to have the client send NACK messages in response to lost packets so the sender can retransmit the lost data packets. The Applicant would like to, respectfully, point out that the retransmission of lost data packets forms but a portion of one of the recited elements to Claim 1. The rejection does not reach the subject matter of Claim 1, as described above. Therefore, this rejection is, respectfully traversed.

Regarding Claims 9, 16, and 21, the Examiner states that these claims are rejected reasons similar to Claim 1. Therefore, the above arguments related to Claim 1 also apply here. The Examiner further states that Marin et al. further teaches successively transmitting a number of response packets responsive to the plurality of said data packets containing said new sender rate adjusting by said server, said new sender rate if said RTT is calculated more than a predetermined threshold value. As previously discussed, there is no new sender rate taught or suggested by Marin et al.

The Examiner asserts that col. 13, lines 19-24 and 36-44 of Marin et al. teaches that that the new sender rate is adjusted if the RTT is calculated more than a predetermined threshold value. The Applicant, respectfully, points out that Marin et al. at col. 13, lines 19-24 and 36-44 discuss a decision box entered to determine if the number data cells transmitted exceeds a predetermined value, and that this discussion is not at all related to adjusting the new sender rate if the RTT is calculated more than a predetermined threshold value. The Applicant, respectfully asserts that the Examiner using a word search tool found the term "a predetermined value" and is simply making the statement that the predetermine value relates to the RTT and calculating a new sender rate. There is, simply put, no foundation for this rejection. There is no new sender rate and the predetermine value within Marin et al. at col. 13, lines 19-24 and 36-44 relates to the number of cell that are transmitted. There is no disclosure or suggestion for adjusting the new sender rate if the RTT is calculated more than a predetermined threshold value within Marin et al. Therefore, this rejection is, respectfully, traversed.

Regarding Claims 3 and 11, the Applicant respectfully points out that these claims define from claims that have already been discussed and are believed to by allowable. Claims 3 and 11 further narrow and define these claims therefore, Claims 3

and 11 are also believed to be allowable.

Regarding Claims 4 and 6, the Examiner asserts that are rejected by similar reason as Claim 1. The Examiner further states that Marin et al. at col. 7, lines 8-17 teaches that the client sends a number of acknowledgment messages, in response to the plurality of the data packets, the new sender rate specifying a transmission rate a which the server may transmit subsequent data packets to the client and adjusting, by the server, in response to the acknowledgment messages, the new sender rate at which the server sends subsequent data packets to the client. The Applicant, respectfully, points out that Marin et al. at col. 7, lines 8-17, as previously discussed, teaches congestion estimation and an estimate of the current queuing delay. There is no new sender rate as defined by the rejected claims. Therefore, this rejection is, respectfully, traversed.

Regarding Claim 7, the Examiner states that that Marin et al. teaches client sending control action packet to server regarding data to assist server in adjusting new sender rate as stated in Claims 4 and 6 above. As previously discussed, there is no new sender rate disclosed or suggested by Marin et al. Therefore, this rejection is, respectfully, traversed.

The Examiner making the rejection with regard to Claims 12, 14, and 20 are rejected for similar reasons as Claims 4 and 6. Therefore, this rejection is traversed for the same reasons stated as for Claims 4 and 6.

The Examiner making the rejection with regard to Claims 15, 19, and 24 are rejected for similar reasons as Claim 7. Therefore, this rejection is traversed for the same reasons stated as for Claim 7.

The Office Action rejects Claims 2, 5, 8, 10, 13, 17-18, and 22-23 under the provisions of 35 U.S.C. §103(a) as being unpatentable over Marin et al. in view of U.S. Publication 2001/0032269 issued to Wilson (hereinafter referred to as Wilson).

Regarding Claims 2 and 5, the Examiner states that Marin et al. teach calculating the round trip time (RTT) based n the time delay when a packet is being sent from the source to the destination and receiving an acknowledgment back at the source from the destination. The Examiner further states that it would have been obvious to one of ordinary skill in the art to be motivated to modify and combine the teachings of Marin et al. and Wilson to calculate the RTT by measuring the time delay between the

transmission of the data packets between the sender and receiver. Wilson does not teach calculate of the RTT. The Applicants, as previously discussed, point out that Marin et al. do teach a method or system that relates to lost data packets. The combination made by the Office Action does not find elements such as receiving a second packet containing the lost packet and calculating the RTT based on the delay between the first packet and the second packet. Nor does the combination made by the Office Action find the elements of an RTT sequence and a new sender rate included within a field of the response packet or determining if one of the data packets is lost. This Office Action does not find all the elements in the rejected claims and, therefore, does not make a *prima fascia* case of obviousness. Therefore, this rejection is, respectfully, traversed,

Regard Claim 8, the Examiner states that Marin et al. do not explicitly disclose computation of said new sender rate is based on a packet loss ratio. The Examiner states that Wilson on page 9, paragraph 73 discloses that the sender rate is determined by loss packet due to network congestion. The Applicant, respectfully, points out that rejected Claim 8 defines subject matter for the new sender rate, not simply the sender rate. The Applicant, further, points out that Wilson on page 9, paragraph 73 discloses that a congestion window determines that rate of packet transfer. There is no discussion or suggestion of a packet loss ratio much less a new sender rate being based on a packet loss ration. Therefore, this rejection is traversed.

The Examiner making the rejection with regard to Claims 10, 13, 17, and 22 are rejected for similar reasons as Claims 2 and 5. Therefore, this rejection is traversed for the same reasons stated as for Claims 2 and 5.

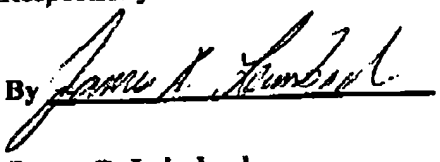
The Examiner making the rejection with regard to Claims 18 and 23 are rejected for similar reasons as Claims 4 and 5. Therefore, this rejection is traversed for the same reasons stated as for Claims 4 and 5.

PAGE 18/19 * RCVD AT 5/3/2005 10:34:06 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/0 * DNIS:8729306 * CSID:5853819983 * DURATION (mm-ss):06-08

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

Respectfully submitted,

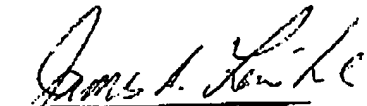
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PAGE 19/19 * RCVD AT 5/3/2005 10:34:06 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/0 * DNIS:8729306 * CSID:5853819983 * DURATION (mm-ss):06-08